

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of VIRGINIA RAY and U.S. POSTAL SERVICE,  
POST OFFICE, Dallas, Tex.

*Docket No. 97-216; Submitted on the Record;  
Issued October 1, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective June 22, 1996.

On March 20, 1989 appellant, then a 34-year-old distribution clerk, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that on October 4, 1988 she first became aware that her depression was due to her federal employment. The Office accepted appellant's claim for major depressive disorder on December 21, 1989. In a letter dated April 16, 1990, the Office placed appellant on the disability rolls effective February 15, 1990.

By letter dated December 2, 1994, the employing establishment submitted a report by Dr. Jeffrey S. Janosky.<sup>1</sup> In the report, Dr. Janosky opines that there is no evidence of a work-related disability and that employment factors did not contribute to any psychiatric disorder appellant may have.

By letter dated June 1, 1995, the Office requested Dr. Louis E. Deere, appellant's treating physician, to submit a current medical report. The Office also requested copies of all of appellant's medical notes from 1991 to the present and that Dr. Deere answer some questions.

In a report dated June 29, 1995, Dr. Deere responded to the Office's questions. Dr. Deere opined that appellant remains totally disabled due to her condition.

By letter dated December 18, 1995, the Office referred appellant to Dr. Kenneth Timken, a Board-certified psychiatrist, along with a statement of accepted facts and medical records, to

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<sup>1</sup> The report is undated and notes that it was prepared by the Aegis Group. No physician's signature is on the document.

get a second opinion as to whether appellant was totally disabled due to her accepted employment-related condition.

In a report dated January 19, 1996, Dr. Timken, based upon a statement of accepted facts, a review of the medical records and physical examination, diagnosed schizophrenic disorder unrelated to her accepted work condition.

On February 14, 1996 the Office issued a notice of proposed termination of compensation. The Office found that the weight of the evidence rested with the well-reasoned report by Dr. Timken and that Dr. Deere's reports were entitled to diminished value as he failed to give any basis for his opinion of disability.

By report dated March 25, 1996, Dr. Deere diagnosed, based upon the medical records and his treatment of appellant, schizophrenia, paranoid and chronic. Dr. Deere noted that appellant's initial treatment was based upon her symptoms which were consistent with a diagnosis of major depression and anxiety disorder. Dr. Deere then responded to Dr. Timken's comments and stated "we think his diagnosis and recommendations were made without a full history and all available medical records." Dr. Deere opined that appellant's current diagnosis of paranoid schizophrenia "has evolved over the last [eight] years." As to causal relationship, Dr. Deere stated that "[t]he sexual, mental, physical, and financial harassment as reported by your office in the letter entitled "STATEMENT OF ACCEPTED FACTS" was sufficient to cause an acceleration of the original symptoms.

By letter dated April 18, 1996, the Office referred appellant, along with a statement of accepted facts, a set of questions to be answered and medical records, to Dr. Thomas Lucas, a Board-certified psychiatrist, for an impartial medical examination.

By report dated May 6, 1996, Dr. Lucas diagnosed, based upon a review of the medical record, statement of accepted facts and physical examination, schizophrenia. Dr. Lucas opined that appellant's schizophrenia was unrelated to her employment as the disease "emerges on its own biologic schedule." Dr. Lucas also noted that appellant "may have had a premorbid depression and in essence made a transition through the period of diagnosis consistent with schizoaffective disorder at which time her psychotic symptoms and her depressive symptoms blended. She now clearly has schizophrenia of the paranoid type."

By decision dated June 13, 1996, the Office terminated appellant's compensation benefits on the basis that appellant's accepted disability had ceased and her current condition was caused by nonwork-related factors. The Office based its decision on the opinion of Dr. Timken, the impartial medical specialist, and supported by the opinion of Dr. Deere that appellant was no longer totally disabled due to her accepted condition of major depressive disorder. The Office found, based upon the medical opinion evidence, that appellant was totally disabled due to her schizophrenia which was not work related. Lastly, the Office terminated compensation benefits effective June 22, 1996.

The Board finds that the Office properly terminated appellant's compensation benefits effective June 22, 1996.

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>2</sup> The Office may not terminate compensation without establishing that the disability ceased or that it was no longer related to the employment. The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>3</sup> If the Office, however, meets its burden of proof and properly terminates compensation, the burden for reinstating compensation benefits shifts to appellant.<sup>4</sup>

Dr. Lucas was selected as an impartial referee medical specialist to resolve the conflict in medical opinion evidence between appellant's treating physician, Dr. Deere, and the Office second opinion referral physician, Dr. Timken. The Board notes that section 8123(a) of the Federal Employees' Compensation Act,<sup>5</sup> provides that where there is a disagreement between the physician making the examination of the United States and the physician of the employee, the Office shall appoint a third physician who shall make an examination.<sup>6</sup> In this case, the Office properly selected Dr. Lucas to make such an impartial examination.

The Board further notes that when a case is referred to an impartial medical specialist to resolve a conflict in medical opinion, the opinion of such specialist, if sufficient well rationalized and based on a proper factual and medical background, must be given special weight.<sup>7</sup> In the present case, Dr. Lucas' opinion was thorough, complete, well rationalized and based on a current statement of accepted facts as well as a review of the complete case record containing all previous medical reports. Dr. Lucas determined that appellant was totally disabled due to her schizophrenia which was unrelated to her employment. Dr. Lucas noted that appellant "may have had a premorbid depression and in essence made a transition through the period of diagnosis consistent with her schizoaffective disorder at which time her psychotic symptoms and her depressive symptoms were blended." This report supports that appellant no longer suffers from her accepted condition of depression and is totally disabled due to her schizophrenia. Since Dr. Lucas' report was well rationalized and based on a complete and accurate factual and medical background, the Office properly accorded it special weight which resulted in it becoming the weight of the medical opinion evidence establishing that appellant no longer had any psychiatric disability causally associated with her accepted employment depressive disorder. Dr. Lucas also opined that appellant's current psychiatric disorder of schizophrenia is unrelated to her employment and would have occurred regardless of whether she had been worked at the employing establishment. The Board thus finds that the Office properly terminated her compensation benefits as her accepted psychiatric disorder of depression had resolved and her current psychiatric disorder of schizophrenia was unrelated to or caused by

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<sup>2</sup> See *Pedro Beltran*, 44 ECAB 222 (1992); *Mary E. Jones*, 40 ECAB 1125 (1989).

<sup>3</sup> See *Virginia Davis-Banks*, 44 ECAB 389 (1993).

<sup>4</sup> See *Del K. Rykert*, 40 ECAB 284, 195-96 (1988).

<sup>5</sup> 5 U.S.C. §§ 8101-8193.

<sup>6</sup> *Debra S. Judkins*, 41 ECAB 616 (1990); *Dorothy Sidwell*, 41 ECAB 857 (1990).

<sup>7</sup> *Jason S. Judkins*, 40 ECAB 907 (1989); *Juanita H. Christoph*, 40 ECAB 354 (1988).

her federal employment. The Office thus properly terminated appellant's compensation benefits as she was not disabled due her accepted condition of major depressive disorder and her current disability was due to schizophrenia which was unrelated to her employment.

The decision of the Office of Workers' Compensation Programs dated June 13, 1996 is hereby affirmed.

Dated, Washington, D.C.  
October 1, 1998

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member